



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,945	07/24/2003	Dennis J. Jones JR.	60073.0004US01	3664
23859	7590	10/04/2006	EXAMINER	
NEEDLE & ROSENBERG, P.C. SUITE 1000 999 PEACHTREE STREET ATLANTA, GA 30309-3915			OGDEN JR, NECHOLUS	
			ART UNIT	PAPER NUMBER
			1751	

DATE MAILED: 10/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/627,945

Applicant(s)

JONES, DENNIS J.

Examiner

Necholus Ogden

Art Unit

1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 45,47-53 and 70-82 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 45,47-52 and 70-82 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 9/06.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9-8-2006 has been entered.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein

Art Unit: 1751

were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 45 and 47-50 and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Lathauwer (5,738,688).

De Lathauwer discloses a method of treating fibers or yarns comprising applying compositions containing tannic acid in an amount from 0.01 to 0.9% by weight of the acid content (col. 2, line 23) and potassium antimony tartrate (col. 3, lines 39-40). De Lathauwer further teaches that said composition may contain condensation products of sulphonated phenols (col. 2, lines 24-25) and polyacrylic acids (col. 3, line 23) and that the compositions have a pH of between 2.5 to 5.

De Lathauwer is silent with respect to the gallic acid content.

It would have been obvious to one of ordinary skill in the art, absent a showing to the contrary, to optimize the gallic acid content limitation of tannic acid because the prior art of record teaches and invites the inclusion of any commercial tannic acid. For it is held that "The normal desire of Scientists or artisans to improve upon what is already generally known provides the motivation to determine where in a disclosed set of percentage ranges is the optimum combination of percentages" Peterson, 315 F.3d at 1330, 65 USPQ2d at 1382.

Art Unit: 1751

5. Claims 45 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gamblin (4,482,646).

Gamblin discloses an ink or dye bath comprising 0.0001% by weight of tannic acid and 25 to 100% by weight of water (col. 3, lines 53-67).

Gamblin is silent with respect to the gallic acid content.

It would have been obvious to one of ordinary skill in the art to optimize, absent a showing to the contrary, the gallic acid content limitation of tannic acid because optimization of components is within the level of ordinary skill. Moreover, it is held that "The normal desire of scientists or artisans to improve upon what is already generally known provides the motivation to determine where in a disclosed set of percentage ranges is the optimum combination of percentages" Peterson, 315 F.3d at 1330, 65 USPQ2d at 1382.

6. Claims 45 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fekete (4,0984,701).

Fekete discloses an aqueous composition for cleaning tin surfaces comprising tannic acid in an amount from 0.01% by weight and greater (see col. 3, lines 1-8 and examples).

Fekete is silent with respect to the gallic acid content.

It would have been obvious to one of ordinary skill in the art to optimize, absent a showing to the contrary, the gallic acid content limitation of tannic acid because optimization of components is within the level of ordinary skill. Moreover, it is held that "The normal desire of scientists or artisans to improve upon what is already generally

Art Unit: 1751

known provides the motivation to determine where in a disclosed set of percentage ranges is the optimum combination of percentages" Peterson, 315 F.3d at 1330, 65 USPQ2d at 1382.

7. Claim 51, 53, 70-76 and 78-82 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Lathauwer (5,738,688) in view of Jones, Jr. (5,520,962).

8. De Lathauwer is relied upon as set forth above. Specifically, De Lathauwer does not employ applicant's specific fluorochemicals.

Jones, Jr. discloses a method and composition for increasing the repellency on carpet and carpet yard comprising fluorochemicals in the amount from 0.0035 and 0.175 wt. of the solids (col. 3, lines 20-26).

Absent a showing to the contrary, It would have been obvious to one of ordinary skill in the art to incorporate the fluorochemicals taught by Jones, Jr. into the compositions taught by De Lathauwer because it is well known in the art to apply fluorochemicals coatings to nylon fabrics to provide stain repellency and De Lathauwer main objective is to improve stain resistance on fibers (see abstract).

9. Claim 77 is rejected under 35 U.S.C. 103(a) as being unpatentable over De Lathauwer et al (5,738,688) in view of Gurley (5,403,362).

10. Jones, Jr. is relied upon as set forth above.

11. Specifically, Jones, Jr. does not suggest stannous chloride as a component in his compositions.

12. Gurley teaches an improved mordant solution and process for preparing fibers for dyeing comprising mordant compounds such as tannic acid and stannous chloride (col. 1, lines 65-col. 2, line 20).

13. It would have been obvious to one of ordinary skill in the art to include and/or substitute the stannous chloride to the compositions of De Lathauwer e because Gurley teaches the equivalence of said stannous chloride and tannic acid as mordants for pre-treating fibers (col. 2, lines 46-49 and col. 3, lines 65-68). Moreover, De Lathauwer invites the use of mordant ingredients to improve discoloration (col. 1, lines 55-65) and/or increase the ability to fix the natural dyestuff, in the absence of a showing to the contrary.

Response to Arguments

14. Applicant's arguments filed 9-8-2006 have been fully considered but they are not persuasive.

15. Applicant argues that the hydrolysis of tannic acid would increase the amount of gallic acid content.

16. The examiner contends that applicant's arguments are conclusory statements unsupported by factual evidence.

17. The arguments of counsel cannot take the place of evidence in the record. In re Schulze, 346 F.2d 600, 602, 145 USPQ 716, 718 (CCPA 1965); In re Geisler, 116 F.3d 1465, 43 USPQ2d 1362 (Fed. Cir. 1997).

Applicant argues that Gamblin, De Lathauwer, Fekete and/or Jones, Jr. do not suggest the gallic acid content of the claimed invention.

The examiner contends that the gallic acid content of the tannic acid components of the above listed prior art is silent, however, the burden is upon applicant to prove otherwise and it well known to the skilled artisan to optimize percentages, since gallic acid is acquired by the hydrolysis of tannic acid it would have been within the level of the skilled artisan to arrive at the gallic acid content absent a showing to the contrary commensurate in scope with the claimed invention. Moreover, by stating that any commercially available tannic acid can be used is a reasonable assumption that tannic acids of a range of gallic acid contents could be employed in a beneficial or synergistic manner.

"The normal desire of scientists or artisans to improve upon what is already generally known provides the motivation to determine where in a disclosed set of percentage ranges is the optimum combination of percentages" Peterson, 315 F.3d at 1330, 65 USPQ2d at 1382.

Applicant argues that there is no suggestion of a two-part treatment composition.

The examiner contends that applicant's claims are directed to a composition and the order of addition or combination bears no relevance.

18. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re*

Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the references of record are related to treatment compositions as suggested by the most comprehensive claim and said references comprise applicant's tannic acid and other ingredients.

19. With respect to applicant's argument of commercial success, the examiner contends that objective evidence of nonobviousness including commercial success must be commensurate in scope with the claims. In *re Tiffin*, 448 F.2d 791, 171 USPQ 294 (CCPA 1971). An affidavit or declaration attributing commercial success to a product or process "constructed according to the disclosure and claims of [the] patent application" or other equivalent language does not establish a nexus between the claimed invention and the commercial success because there is no evidence that the product or process which has been sold corresponds to the claimed invention, or that whatever commercial success may have occurred is attributable to the product or process defined by the claims. *Ex parte Standish*, 10 USPQ2d 1454, 1458 (Bd. Pat. App. & Inter. 1988).

With respect to applicant's Caustic 10 Total (Macbeth) table, it is the examiners position that the table is not unexpected because the prior art of record, specifically De Lathauwer, teaches that any commercial gallic acid may be used, which includes lower and upper amounts of tannic acid contents. Moreover, applicant does compare the closest prior art with the claimed invention. Instead, applicant assumes that certain examples encompass the prior art of record and assumes criticality has been established. This is not proper by the standards of the office. To establish unexpected results over a claimed range, applicants should compare a sufficient number of tests

Art Unit: 1751

both inside and outside the claimed range to show the criticality of the claimed range. In *re Hill*, 284 F.2d 955, 128 USPQ 197 (CCPA 1960). 716.02(e). An affidavit or declaration under 37 CFR 1.132 must compare the claimed subject matter with the closest prior art to be effective to rebut a prima facie case of obviousness. In *re Burckel*, 592 F.2d 1175, 201 USPQ 67 (CCPA 1979). "A comparison of the claimed invention with the disclosure of each cited reference to determine the number of claim limitations in common with each reference, bearing in mind the relative importance of particular limitations, will usually yield the closest single prior art reference." In *re Merchant*, 575 F.2d 865, 868, 197 USPQ 785, 787 (CCPA 1978) Where the comparison is not identical with the reference disclosure, deviations therefrom should be explained, In *re Finley*, 174 F.2d 130, 81 USPQ 383 (CCPA 1949), and if not explained should be noted and evaluated, and if significant, explanation should be required. In *re Armstrong*, 280 F.2d 132, 126 USPQ 281 (CCPA 1960).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Necholas Ogden whose telephone number is 571-272-1322. The examiner can normally be reached on M-T, Th-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on 571-272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1751

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Nicholas Ogden
Primary Examiner
Art Unit 1751

No
9-27-2006